

(1994) 03 KAR CK 0027
In the Karnataka High Court
Case No : W.A. No's. 2668 to 2777 of 1993

Karnataka Wine Merchants Association	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

Constitution of India, 1950 — Article 47
Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 5

Citation : (1994) ILR (Kar) 903 : (1994) 2 KarLJ 570

Hon'ble Judges : Somasekhara, J; Rajendra Babu, J

Bench : Division Bench

Advocate : Santosh Hegde and K.H. Jagadeesh, for the Appellant; B.V. Acharya, General and Somyaji, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J

1. These Writ Appeals arise out of a common order made by the learned Single Judge upholding the validity of Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, as amended with effect from 21st June, 1993. We have heard all matters listed before us together, but we are disposing of one set of matters giving detailed reasons while other matters will be disposed of separately by following this order for purpose of convenience.

2. The Appellants are licensees in Form No. CL 2 or CL 9 issued under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968. The Karnataka Excise Licences (General Conditions) Rules are also applicable to them. Prior to the amendment of the said Rules, Rule 5 of the General Conditions Rules read as follows:

"5. Restrictions regarding location of Shops:- (1) The Licensee shall except in Towns and cities and other places where more than one shop is sanctioned, select a suitable site outside but adjacent to a village for locating his shop.

Provided that so such sites shall be selected to locate a shop within a distance of one hundred metres from any religious or educational institutions or residential locality inhabited predominantly by Scheduled Castes and Scheduled Tribes."

3. It is claimed on behalf of the petitioners/Appellants that they had been carrying on the business for several decades under the licenses for long periods and these licences had been renewed from time to time. The Appellants, when they applied for renewal of licences for the Excise Year 1993-94, the State Government having brought in the Amendment to the said Rule imposing certain additional restrictions in respect of location of shops, refused to renew the licences. The amended Rule reads as follows:

"5. Restriction in respect of location of shops:-

(1) No licence for sale of liquor shall be granted to a liquor shop or premises selected within a distance of 100 metres from any religious or educational institutions or Hospital or any office of the State Government or Central Government or Local authorities ,or in a residential locality, where the inhabitants are predominantly belonging to Scheduled Castes or Scheduled Tribes or within a distance of 220 Metres from the middle of the State Highways or National Highways.

xx xx xx "

Highway is understood to mean as such parts or thereof as one not situated within any Municipal Area. Municipal Area is defined to mean with a population of 20,000 or more the control or management of which is entrusted to a Corporation, Municipal Council or any other authority.

4. It is stated that under the said Rules, there are two classes of shops located on the Highways; one set of shops which falls within the Municipal Area and the other that falls outside the Municipal Area; that the discrimination between the two sets of persons is wholly irrational and arbitrary; that the classification made has no reasonable nexus to the object of avoiding consumption of liquor while driving on the Highways and thereby reduce the number of accidents taking place under the influence of alcohol; that the objective being not to allow persons to drive on the Highways in a drunken state, the classification between shops situate within the Municipal Area on the Highway and those outside the Municipal Area on the Highway is wholly arbitrary for that object of avoiding drunkenness can never be achieved inasmuch as those who want to get drunk can get drunk even earlier and continue to drive and those who are bent upon taking a drink can even purchase a bottle of liquor and carry the same with them and drink on the way wherever they feel like.

5. It is also urged on behalf of some of the appellants that the restriction of locating a shop or premises where trade in liquor can be carried on within a distance of 100 metres from any religious or educational institution or residential locality inhabited predominantly by Scheduled Castes and Scheduled Tribes, is

also an unreasonable restriction; that in many cases, the hospitals or educational institutions or religious institutions or office of the State or Central Government or local authority may come up in an area subsequent to the grant of licence and thereafter if a person is asked to shift the premises, it will cause grave hardship and therefore the rule is arbitrary; that in some Towns or Cities there are innumerable religious places almost in every nook and corner and it is impossible to locate a liquor shop in compliance with the relevant rule; that in fact in some towns liquor shops are located in violation of the said Rule. On behalf of the Appellants, reliance is placed upon the Decisions of the Supreme Court in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, *Doongaji and Co. Vs. State of Madhya Pradesh and others*, *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, *R. Vijayakumar and Others Vs. Commissioner of Excise and Others*,

6. The principle of law for which reliance is placed on the Decisions mainly is to emphasise the fact that the State being the repository of power whether legislative, administrative or quasi-judicial, is open to challenge if its exercise is in conflict with the Constitution or the governing Act or the General principles of law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The argument in relation to Article 14 is in two facets. Firstly, in the traditional method of approaching the problem that classification into two categories itself being bad or even assuming for a moment that classification is good, that it has no nexus with the object to be achieved. In another facet, it is urged that the whole action is arbitrary because the objective with which the Rule is sought to be enforced can never be achieved.

7. The State, in their statement of objections filed, though not in the Writ Petitions but in the Writ Appeals, sets out the circumstances in which this Rule came to be framed. It is stated in para 6 thereto that a High Level Committee Meeting on Improvement of Traffic Transportation and Road Safety in Karnataka State was held on 10.11.1992. In the course of its deliberations, one of the items discussed was the licencing of bars close to the National Highways and State Highways. That Committee recommended that Section 185 of the Motor Vehicles Act, 1988 which provides for punishment for driving a motor vehicle while a person has consumed alcohol is not adequate and in addition it was recommended that Rules should be framed for preventing licencing of bars on the National Highways. It was pointed out that liquor should not be easily available on the National and State Highways and accordingly, it was recommended for framing of rules preventing licencing of bars on the National Highways. The contention that if the impugned order is given effect to, it will compel the drivers of the vehicle to carry the liquor in the vehicle for the purpose of consumption during travelling, is denied as without any substance. It is contended that in the normal circumstances, no person likes to carry liquor along with him. Moreover, even an addict would not like to take the drink for some time and not carry liquor with him during travel but would be tempted, if on the way he sees liquor shop and stop the vehicle and consume liquor. The allegation that

for every 15 to 20 Kms. distance on the National Highways there is a Municipality and generally within a distance of 20-25 KMs. in the State Highway there is a Municipality or that the only object of the impugned Rule pertaining to distance is to provide more business to the shops situated within the Municipal limits and encourage illicit sale of liquor on National Highways, is denied. It is also submitted that normally no driver would stop the vehicle in a crowded area within the Municipal area where there are many shops and many people to consume liquor. It is submitted that only in places where liquor shops are situated in solitary places the temptation to stop and consume liquor arises.

8. So far as the right of the appellants is concerned to carry on trade in liquor, no arguments were addressed in view of the Decisions of the Supreme Court and in particular of this Court in *M/s. Jagadale and Sons, Bangalore and Vs. State of Karnataka and Others, etc.*, for there is no fundamental right to carry on trade in liquor. However, the contention urged now is only in relation to discrimination or arbitrariness arising under Article 14 of the Constitution to which we have made reference earlier.

9. The object of the impugned Rule, it appears to us is that the activity of selling liquor in certain areas is sought to be eliminated, thus making liquor inaccessible in such areas. Admittedly the activity of selling liquor is noxious or deleterious to the health of the people. In fact Article 47 of the Constitution enjoins on the State to introduce prohibition as State Policy. Indeed, if, introduction of prohibition which was dear to the Father of the Nation is not possible either for administrative or financial reasons, the only alternative so far as the State is concerned is to contain the proliferation of the activity. The amended Rule partially promotes that policy by making liquor inaccessible on the Highways except those areas which fall within the Municipal Areas. The Policy as such cannot be found fault with. When prohibition itself cannot be introduced for various reasons, the only other alternative for the State is to contain or regulate the trade thereto. If the proclivity to drink is contained, at any rate in certain areas, the tendency thereto is reduced to some extent. May be the manner in which the reasons are set forth in the statement of objections may not be very articulate. But the effect of the Rule is to that effect. If this is the objective, we cannot say the action on the part of the State or the policy thereto is either arbitrary or unreasonable.

10. Now, what is to be seen is whether the classification between the shops falling within the Municipal limits and those falling outside the Municipal limits is valid or not. It is no doubt true that Highways pass through even cities or within municipal areas. That does not mean that there can be no City or a Municipal area or Town on the National Highways. If there is a shop within the municipal limits and if such shop is allowed to sell liquor and, if only shops outside the municipal area are sought to be eliminated, We do not find that there is any unreasonable classification for one falls within the municipal area or the other falls outside the town. Therefore, classification cannot be stated to be bad, for it

is based on discernible grounds.

11. It is urged on behalf of the appellants that the Department is seeking to interpret Highway in an arbitrary manner and has issued a circular to that effect. A perusal of the circular to that effect would disclose that the definition adopted in regard to Highway is as provided under the National Highways Act, 1956. Therein it is stated that Highway specified in the schedule means except such parts thereof as are situated within any Municipal Areas, is hereby declared to be a National Highway and, in the definition, it is made clear that any "Municipal Area" means with a population of 20,000 or more, the control or management of which is entrusted to Corporation or a Municipal Council or a Town area Council, a Town Committee or any other Authority. The definition or the areas falling within the municipal area and outside is recognised in the National Highways Act also. Similar is the position even in regard to Nationalisation of routes arising under the Motor Vehicles Act wherein the operation of any transport vehicle on a route is nationalised, exception is made to the areas falling within the municipality or a local authority. In that way, it is accepted in all enactments the difference between the areas falling within the Municipal area or outside the municipal area, even though the route or road is a Highway. Therefore, the difference noticed by the Department is not irrational.

12. On the aspect whether the classification would achieve this object or not, We have already adverted that the objective is only to contain the temptation to drink and that is confined to an area outside the Municipal limits. It is no doubt true that it is not possible to entirely eliminate drinking, thereby, if one is determined to drink in any event, would carry sufficient quantity of liquor throughout the National Highway, But that by itself cannot be a standard or test to show whether the classification is irrational or has no nexus to the objective sought to be achieved. In that view of the matter, We reject the contention advanced on behalf of the appellants.

13. On the question whether any liquor shops could be located near educational institutions, offices, religious institutions etc., as referred to in Rule 5, We do not think there can be much argument. Each of these prohibitions are traditionally on the statute ever since licences are granted and such conditions are already prevalent in one form or - another with less or stronger rigour. No one can deny that in places where people congregate either for religious purpose or for purpose of education or visit offices, those places must be made safe and near such places there cannot be an activity in relation to sale or purchase of liquor. In that view of the matter, we do not find any substance in the contention advanced on behalf of the appellants in that regard. We respectfully agree with the learned single Judge in his view that, that part of the Rule advances public interest inasmuch as it is in the interest or morality, tranquillity, decency or safety of the public. Thus, there is no substance in the contention urged on behalf of the appellants in this regard. In cases where there are liquor shops located already and religious institutions, educational institutions and offices have come up later

or whether the Rule cannot be worked out for any City crowded with such institutions, are all matters to be considered by the concerned authority in individual cases and due action taken, but these circumstances cannot invalidate the Rule in any manner. Therefore, all these Appeals are liable to and are dismissed.

14. During the pendency of these proceedings, licences have been granted to the appellants pursuant to the Interim Orders. It is but reasonable that the respondents should continue to allow the appellants to carry on business till the end of the current excise year i.e.. till the end of June, 1994 as requested for appellants. Request of the appellants in this regard appear to be reasonable and we direct the respondents to do so accordingly.

15. Subject to what is stated above, these Writ Appeals are dismissed.